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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following report of the Joint Committee on the Bill to provide for the more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith was presented to Lok Sabha on the 20th November, 1967:—

COMPOSITION OF THE COMMITEE

Dr. Sushila Nayar—*Chairman*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri Kushok Bakula
4. Shri S. M. Banerjee
5. Shri Bedabrata Barua
6. Shri R. D. Bhandare
7. Shri Krishna Kumar Chatterji
8. Shri Tridib Chaudhuri
9. Shri N. T. Das
10. Shri Devinder Singh
11. Shri Surendranath Dwivedy

12. Shri Ram Krishan Gupta
13. Shri V. Krishnamoorthi
14. Shri Madhu Limaye
15. Shri Raja Venkatappa Naik
16. Shri Jagannath Pahadia
17. Shri Nanubhai N. Patel
18. Shri P. Ramamurti
19. Shri K. Narayana Rao
20. Shri A. S. Saigal
21. Shri B. Shankaranand
22. Shri Prakash Vir Shastri
23. Shri Vidya Charan Shukla
24. Shri S. S. Syed
25. Shri Atal Bihari Vajpayee
26. Shri Y. B. Chavan

Rajya Sabha

27. Shri Abid Ali
28. Shri Surjit Singh Atwal
29. Shri Sundar Singh Bhandari
30. Shri Babubhai M. Chinai
31. Shri Chandra Shekhar
32. Shri Surendra Mohan Ghosh
33. Shri Dayaldas Kurre
34. Shri Balachandra Menon
35. Shri R. T. Parthasarathy
36. Shrimati C. Ammanna Raja
37. Shri M. Ruthnaswamy
38. Shri Niranjan Singh
39. Shri A. M. Tariq

LEGISLATIVE COUNSELS

1. Shri V. N. Bhatia, *Secretary, Legislative Department, Ministry of Law.*
2. Shri S. K. Maitra, *Additional Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. Shri L. P. Singh, *Secretary.*
2. Shri T. C. A. Srinivasaveradhan, *Joint Secretary.*
3. Shri G. K. Arora, *Deputy Secretary.*
4. Shri N. Vittal, *Under Secretary.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

REPORT OF THE JOINT COMMITTEE

I, the Chairman of the Joint Committee to which the Bill* to provide for the more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith was referred, having been authorised to submit the report on their behalf, present their Report, with the Bill as amended by the Committee, annexed thereto.

2. The Bill was introduced on the 31st May, 1967. The motion for reference of the Bill to a Joint Committee was moved in Lok Sabha by Shri Y. B. Chavan, the Minister of Home Affairs, on the 10th August, 1967 and adopted on the same day.

3. Rajya Sabha discussed the said motion on the 14th and 16th August, 1967 and concurred therein on the 16th August, 1967.

4. The message from Rajya Sabha was published in the Lok Sabha Bulletin, Part II, dated the 18th August, 1967.

5. The Committee held five sittings in all.

6. The first sitting of the Committee was held on the 12th September, 1967 to draw up their programme of work. The Committee at this sitting decided to hear the Attorney-General of India on the constitutional aspect of the Bill At this sitting the Committee also decided to issue a Press Communique inviting memoranda on the Bill from the interested parties etc.

7. Two memoranda were received by the Committee from the Delhi Bar Association, Delhi and the Delhi Administration on the Bill which were circulated to the members.

8. At their second sitting held on the 16th October, 1967, the Committee heard the evidence given by the Attorney-General of India. The Attorney-General was requested by the Committee to express his opinion on the vires of the Bill and also on the question whether the restrictions proposed to be imposed by the Bill on the fundamental rights of speech and expression, assembly and to form associations or unions were reasonable. The Attorney-General was of the opinion that the proposed legislation came clearly within the ambit of clauses (2) to (4) of article 19 of the Constitution and as such the Bill would not be capable of being challenged as unconstitutional. He also was of the opinion that the restrictions which have been proposed to be imposed by the Bill on the Fundamental rights of individuals and associations were reasonable restrictions within the meaning of clauses (2) to (4) of article 19 of the Constitution. He held the view that having regard to the situation prevailing at present in some parts of the country, some kind of legislation of the proposed nature was necessary. According to him, the subject matter of the proposed legislation is not covered by any existing law and as such the proposed legislation is not a superfluous or over-lapping one. The At-

*Published in Gazette of India, Extraordinary, Part II, Section 2, dated 31st May, 1967.

torney-General, however, considered that some sort of safeguard ought to be provided in the Bill in respect of the powers which have been given to the Government to extend the period of the ban on an unlawful association by means of a notification.

9. The Committee have decided that the evidence given before them should be printed and laid on the Tables of both the Houses *in extenso*.

10. The Committee considered the Bill clause-by-clause at their third and fourth sittings held on the 17th and 18th October, 1967 (both in the forenoon and afternoon).

11. The Report of the Committee was to be presented on the 13th November, 1967. As this could not be done the Committee requested for extension of time for presentation of their Report upto the 20th November, 1967, which was granted by the House on the 14th November, 1967.

12. The Committee considered and adopted the Report on the 12th November, 1967.

13. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

14. *Clause* 2—The Committee are of the opinion that since the expression "sovereignty and integrity of India" has been used in the Constitution (Sixteenth Amendment) Act, 1963, that expression should be used as a whole and should not be split up into two so that the implications of that expression may not be lost. Items (ii) and (iii) of sub-clause (f) have, therefore, been combined into one.

The other changes made in sub-clauses (a), (d) and (g) of the clause are of a drafting nature.

15. *Clause* 4—The Committee consider that where a notification issued under sub-clause (1) of clause 3 has been referred by the Central Government to the Tribunal for adjudication, the Tribunal must decide the matter within some time limit. The Committee have, therefore, amended sub-clause (3) to provide for a maximum period of six months from the date of issue of the said notification, within which the tribunal must decide the matter referred to it.

The other amendment made in sub-clause (3) is to make the intention clear.

16. *Clause* 5—The Committee are of the view that in order to inspire confidence of the public in the Tribunal and from the point of administrative convenience, the Tribunal should consist of a sitting Judge of a High Court.

The clause has been amended accordingly.

17. *Clause* 6—The Committee are of the opinion that it was not desirable that the Government should have the power to continue the ban on unlawful association without a fresh judicial determination with regard to such continuation.

Proviso to sub-clause (1) has, therefore, been omitted.

18. *Clause* 7—The amendment made in sub-clause (1) is clarificatory in nature. The Committee feel that investigation under this clause should only be entrusted to an officer belonging to a Gazetted rank.

Sub-clause (2) has been amended accordingly.

Amendment in sub-clause (5) is of a consequential nature.

19. *Clause* 8—The Committee are of the view that articles used in the ordinary course of living or articles of a trivial nature should not be listed as moveable properties and that near relatives of any person, who is a resident of a prohibited place, should be exempted from the provisions of sub-clause (4). The Committee also consider that under sub-clause (4) the District Magistrate himself and not any officer authorised by him should issue an order and further under sub-clause (6) police officer not below the rank of sub-inspector should have the power to carry on searches etc.

Sub-clauses (2), (4) and (6) of this clause have been amended accordingly.

20. *Clause* 10—In view of omission of proviso to sub-clause (1) of clause 6 which in effect restricts the operation of notification issued under that clause to two years without fresh notification, the Committee consider that the ends of justice will be met if the punishment provided under this clause, for being a member of an unlawful association, is reduced from three years to two years.

The clause has been amended accordingly.

21. *Clause* 12—In view of the reasons given for reduction of term of punishment under clause 10, the Committee have also decided to reduce the punishments provided under sub-clause (1) and (2) of this clause from three years to one year. The other amendments in sub-clauses (1) and (2) are of a drafting nature.

Consequent to insertion of a new clause, namely, clause 14, sub-clause (3) has been omitted.

22. *Clause* 13—Sub-clauses (1) and (2) have been amended to reduce the punishments from ten and seven years to seven and five years respectively.

23. *New Clauses* 14—The Committee feel that all offences under the Act should be made cognizable irrespective of the maximum period of imprisonment provided thereunder.

A new clause has, therefore, been added for the purpose.

24. (*Original Clause* 15)—It was stated on behalf of Government that as in the case of parent associations, in the case of succeeding associations also all the processes envisaged under the Act will be initiated and gone through before declaring it unlawful.

The Committee consider that since the Government proposes to take all the steps afresh in such a case, this clause is a superfluous one and as such its retention is not necessary. The clause has, therefore, been omitted.

25. *Clause* 18—The word 'Central' has been omitted in sub-clauses (1) and (2) to cover both the Central and the State Governments within the scope of this clause.

26. The Joint Committee recommend that the Bill, as amended, be passed.

NEW DELHI;
The 12th November, 1967.
Kartika 21, 1889 (*Saka*).

SUSHILA NAYAR,
Chairman,
Joint Committee.

MINUTES OF DISSENT

I

I am totally opposed to the Bill. In spite of the weighty opinion of the Attorney-General of India that the Bill is a permissible legislation under exception to Article 19 of the Constitution, I still consider that the Bill contains provisions curtailing the Fundamental Rights guaranteed by the Constitution. I do not agree that the restrictions are reasonable within the meaning of Article 19. True, clauses to Article 19 do not prevent the State from making any law, in so far as such law imposes reasonable restriction on the exercise of any right conferred by the said Article in the interest of sovereignty and integrity of India.

2. The wording of the clauses to Article 19 has to be carefully noted especially the words "Nothing.....prevent" and the words "imposes reasonable restrictions".

3. The State is not prevented from making the necessary legislation in the interest of sovereignty and integrity of India. The hon. Home Minister while introducing the Bill has not made out a case regarding any threat to the sovereignty and integrity of India. If there is no such case, the Government certainly is prevented from bringing forward such legislation.

4. Again, the question whether the restrictions are reasonable has to be gone into very carefully. The wording of section 2 which defines unlawful activity is so wide that any honest expression or suggestion even for a peaceful settlement of a border dispute might come within the mischief of the provision. One can understand violent activities by a group of persons with the intention of bringing about the secession of a part of India or the secession of a part of the territory of India to be unlawful but words spoken or written or mere signs etc. are now within the purview of "unlawful activity". This will result in stifling honest opinion and criticism.

5. A notification issued under section 3 and confirmed by the Tribunal remains in force for a period of 2 years. This is a real threat to the right of organisation. A notification after confirmation by the Tribunal should have validity only for a period of six

months. The powers to prohibit the use of funds (section 7), to notify places (section 8), to conduct search [section 8 (6)] and the penalty imposed under Chapter III are all excessive and drastic and not required under conditions now existing in the country.

6. Further, in a big country like ours where free and full development of various nationalities has yet to take place and where the so called "backward classes and tribes" have yet to advance, a legislation of this type can only help to create suspicion and mistrust among such people and may prove even disruptive.

NEW DELHI;
The 13th November, 1967.

BALACHANDRA MENON.

II

यह बड़ा सराहनीय उद्देश्य है कि देश की एकता, अखण्डता तथा प्रभुसत्ता को बनाये रखने का ध्यान रखा जाये परन्तु यह विधेयक, जिस रूप में यह संयुक्त समिति से आया है, सत्तारूढ़ दल के अधिकारों में एक और अधिकार बढ़ाने के लिये ही है जिससे कि देश में उसके विरूद्ध जो तनाव बढ़ रहा है उसे वह रोक सके। इस कानून को बनाने में सरकार का उद्देश्य भारत की प्रभुसत्ता और क्षेत्रीय अखण्डता को बनाये रखने और उसकी रक्षा करने का नहीं है अपितु अपने को सत्ताहीन होने से बचाने के लिए है।

2. किसी भी देश ने, स्वतंत्र होने के बाद, स्वेच्छापूर्वक इतना अधिक क्षेत्र नहीं खोया है जितना कि भारत ने कांग्रेस शासन के अधीन पिछले बीस वर्षों में। सत्तारूढ़ दल के सदस्यों के लिये देशभक्ति और राष्ट्रीयता के अर्थ समय-समय पर, स्थान स्थान पर और व्यक्ति-व्यक्ति के संदर्भ में बदलते रहे हैं। भारत के पहले प्रधान मंत्री ने अपनी इच्छा से संसद से भी परामर्श लिये बिना ही, बेरूबारी क्षेत्र पाकिस्तान को देने के लिये संधि कर ली। दूसरे प्रधान मंत्री ने भी, चाहे दबाव में आकर ही सही, हमारे राज्य का काफी बड़ा भाग, ताशकन्द में पाकिस्तान को बदले में दे दिया। क्या पहले दो प्रधान मंत्रियों के ये कार्य भारत की राष्ट्रीय प्रभुसत्ता और क्षेत्रीय अखण्डता को बनाये रखने के लिए थे? निश्चित ही नहीं। वहां कोई भी नहीं जानता कि भारत की तीसरी प्रधान मंत्री अन्तर्राष्ट्रीय शान्ति को खरीदने के अपने उत्साह में, राज्य क्षेत्र के रूप में पाकिस्तान और चीन को क्या कीमत चुकायेंगी।

3. मेरा यह दृढ़ विश्वास है कि जब तक संसद द्वारा बनाये गये कानूनों को, जिनका पहले ही बाहुल्य है, उनकी भाषा और भावना दोनों दृष्टिकोणों से कार्यान्वित नहीं किया जाता, तब तक चाहे कितने ही कानून बनाये जायें राष्ट्र की एकता एवं अखण्डता बनाये रखने में सरकार को कोई सहायता नहीं मिलेगी।

4. वर्तमान विधेयक द्वारा जिन दैत्याकारी शक्तियों की मांग की गई है, वे संविधान के अनुच्छेद 19 (2), (3) तथा (4) के अन्तर्गत निहित "भारत की प्रभुसत्ता तथा अखण्डता के हितों के लिये" उचित प्रतिबन्ध नहीं कही जा सकता। विधेयक के साथ संलग्न 'उद्देश्यों तथा कारणों के विवरण' से भी सरकार द्वारा इतनी विशाल शक्तियां प्राप्त करने का औचित्य प्रतीत नहीं होता। इस विधेयक से इन वे परम्परागत न्याय सम्बन्धी सिद्धान्तों की भी अवहेलना होती है कि किसी व्यक्ति को स्वयं उसके द्वारा किये गये अपराध पर ही दण्ड दिया जा सकता है "संबंधों द्वारा हुए अपराध" पर नहीं। इस प्रकार के अपराध की धारणा राष्ट्र की सुरक्षा निकट भविष्य में गम्भीर विपत्ति की अवस्था में ही न्यायोचित है और इस अवस्था से निबटने के लिये संविधान में पर्याप्त उपबन्ध हैं। यदि इस विधेयक को, संयुक्त समिति द्वारा की गई सिफारिशों के रूप में विधान का रूप दे दिया तो क्या सरकार ये शक्तियां उन संस्थाओं और अनेकों "मोर्चों" के विरुद्ध प्रयोग करेगी जो खुले आम राजद्रोह और अलगाव का प्रचार करते हैं? सच तो यह है कि सत्तारूढ़ दल, "भारत की प्रभुसत्ता तथा अखण्डता" बनाये रखने के लिये इतना इच्छुक नहीं है जितना वे अपने दल की प्रभुसत्ता और एकता बनाये रखने के लिये हैं। डर यह है कि ये असीम शक्तियां उन दलों के विरुद्ध काम में लाई जायेंगी जो भारत भूमि के पूर्ण एकीकरण और एकता के समर्थक हैं। शासक दल अपनी सत्ता, जो उसके हाथों से धीरे धीरे निकलती जा रही है बनाये रखने के लिये ऐसे कानून बनाने के लिये इच्छुक रहती है जो राष्ट्र हित में न हों और जिनसे दलगत उद्देश्यों की पूर्ति हो। यह विधेयक इस बात का एक ज्वलन्त उदाहरण है।

5. विधेयक के खण्ड 5 में एक न्यायाधिकरण स्थापित करने की व्यवस्था है जो यह निर्णय करेगा कि अधिसूचित किसी संस्था को अवैध घोषित करने के लिये न्यायोचित आधार है या नहीं। यह सर्वविदित है कि इस देश में न्यायाधिकरण सफल नहीं रहे हैं। उन्हें जन-साधारण का विश्वास और सम्मान प्राप्त नहीं हुआ है। यह स्थिति नहीं है कि उनकी निष्पक्षता के बारें में सन्देह न किया जाता रहा हो। इन न्यायाधिकरणों के लिये न तो सिविल प्रक्रिया संहिता आवश्यक है और न दण्ड प्रक्रिया संहिता ही। नैसर्गिक न्याय के सिद्धान्तों का भी वे सम्मान नहीं करते। अतः कोई संस्था विशेष अवैध संस्था है या नहीं, इस बारे में अन्तिम निर्णय करने का कार्य उच्च न्यायालय को सौंपा जाना चाहिये न कि सरकार द्वारा नियुक्त न्यायाधिकरण को। जब तक इसकी प्रक्रिया सरकार द्वारा निर्धारित की जाती रहेगी और सरकार को न्यायाधिकरण के सदस्यों के चयन का अधिकार प्राप्त रहेगा, तब तक इस बात से कोई अन्तर पड़ने वाला नहीं है कि न्यायाधिकरण का सदस्य एक वर्तमान न्यायाधीश है या कोई अन्य बाहरी व्यक्ति है, हलांकि किसी अन्य बाहरी व्यक्ति की अपेक्षा एक न्यायाधीश को जनता का अधिक सम्मान प्राप्त होगा। मेरा यह दृढ़ विश्वास है कि इस प्रकार के विषयों को न्यायाधिकरणों के लिये न छोड़ा जाये। इस तर्क में कोई जान नहीं है कि उच्च न्यायालयों में पहले ही अत्याधिक काम है क्योंकि यदि अधिकारों का प्रयोग ठीक प्रकार से केवल भारत की प्रभुसत्ता तथा क्षेत्रीय अखण्डता बनाये रखने के लिये किया गया तथा उसका प्रयोग किसी अन्य बाह्य प्रयोजन के लिये नहीं किया गया तो इस अधिनियम के अन्तर्गत मामले अधिक नहीं होंगे। इस विधेयक के अन्तर्गत इस प्रस्तावित न्यायाधिकरण की आड़ में सरकार द्वारा तानाशाही अधिकार प्राप्त किये जा रहे है।

6. इस विधेयक के खण्ड 19 के अन्तर्गत जिस सीमा तक शक्ति का प्रत्यायोजन प्रस्तावित है वह आपत्तिजनक है। इस खण्ड में यह व्यवस्था की गई है कि धारा 7 और 8 के अन्तर्गत केन्द्रीय सरकार "गैर-कानूनी सस्था की धन-राशियों के उपयोग पर रोक लगाने" तथा "जिन स्थानों को गैर-कानूनी कार्यवाहियो के लिये प्रयोग किया जा रहा हो उनकी घोषणा" करने का अधिकार केवल राज्य सरकारों को ही न देगी बल्कि राज्य सरकारों को भी यह अधिकार होगा कि वे यह अधिकार आगे अपने अधीनस्थ "किसी व्यक्ति" को पुन. प्रत्यायोजित कर दे और यह निर्धारित नहीं किया गया है कि ऐसा व्यक्ति कम से कम किस श्रेणी का होगा अथवा उसका शासकीय स्तर क्या होगा।

7. मेरा विचार है कि संयुक्त समिति द्वारा प्रतिवेदित रूप में वर्तमान विधेयक असफल रहेगा और उससे वे समस्यायें हल नहीं होंगी जिनका हल करने के लिये यह विधेयक लाया गया है।

नई दिल्ली,
15 नवम्बर, 1967

प्रकाशवीर शास्त्री

(*English translation of the above*)

It is a very laudable object that unity, integrity and sovereignty of the country is ensured but the Bill, as it has emerged from the Joint Committee, only seeks to add one more power to the elbow of the party in power in order to enable it to check the growing tension against it in the country. The motive of the Government in getting this law passed is not to maintain and protect the sovereignty and territorial integrity of India but to protect itself from going out of power.

2. No country has, after gaining independence, ceded so much of territory voluntarily as India has done during the last twenty years under the Congress rule. For the members of the ruling party the meanings of patriotism and nationalism differ from time to time, from place to place and from person to person. The first Prime Minister of India, on his own, without even consulting Parliament, made a treaty for handing over Berubari to Pakistan. The second Prime Minister also, may be under duress, bartered away large chunks of our territory to Pakistan at Tashkent. Were these acts of the first two Prime Ministers of India for the preservation of national sovereignty and territorial integrity of India? Certainly not. No body knows what price the third Prime Minister of India would, in her enthusiasm for purchasing international peace, pay to Pakistan and China in terms of territory.

3. It is my firm belief that unless the laws enacted by Parliament, already in abundance, are faithfully implemented both in letter and spirit no amount of legislative enactments would help the Government in maintaining the unity and integrity of the nation.

4. The dracconian powers sought to be assumed under the present Bill could not be justified as reasonable restrictions "in the interests of the sovereignty and integrity of India" as envisaged under Article 19(2), (3) and (4) of the Constitution. Even the "Statement of Objects and Reasons" appended to the Bill does not justify assumption of such vast powers by the Government. The Bill throws overboard the traditional juristic principles that a person may be penalised only for his *personal* guilt and not for "guilt

by Association". The concept of "guilt by Association" could be justified only in conditions of grave imminent peril to the nation's security and to deal with such a contingency the Constitution contains adequate provisions. If the law is enacted as has been recommended by the Joint Committee, will the Government use its powers against those institutions and numerous "fronts" which openly preach sedition and secession? The fact remains that the party in power is not so much interested in the maintenance of "sovereignty and integrity of India" as they are in building up "sovereignty and integrity of their own party". There is a lurking fear that these sweeping powers will be used against those parties which stand for the complete unity and integration of Bharat Bhumi. The ruling party in order to retain power, which is slowly slipping from its grip, is always eager to enact laws intended to be used not for national interest but for party ends and this Bill provides a glaring instance.

5. Clause 5 of the Bill seeks to set up a tribunal for adjudicating whether or not there was sufficient cause for declaring a notified association as an unlawful association. As is very well known, tribunals in this country have been a failure. They have not commanded the confidence and respect of the people. Their impartiality has not been beyond doubt. For these tribunals neither Civil Procedure Code nor Criminal Procedure Code are necessary. They will not have regard even for principles of natural justice. Therefore, the machinery for making a final decision whether a particular organisation is an unlawful association or not should have been left to the High Court instead of to a Tribunal appointed by the Government. So long as its procedure is determined by the Government and the Government has power to pick and choose the personnel of the Tribunal, it makes little difference whether the Tribunal is manned by a sitting judge or an outsider, although the former will tend to command greater respect of the people than the latter. It is my firm belief that matters like this should not be left to Tribunals. The plea that High Courts are already burdened with overwork does not carry conviction because the cases under this Act would not be much, if the powers are judiciously used only for the maintenance of sovereignty and territorial integrity of India and not for some ulterior purposes. The proposed Tribunal under the Bill would be only a smoke screen behind which the dictatorial powers are being sought for the Government.

6. The extent of delegation of power contemplated under Clause 19 of the Bill is objectionable. It seeks to authorise not only the

Central Government to delegate power "to prohibit the use of funds of an unlawful association" and "to notify places used for the purpose of an unlawful association" under Sections 7 and 8 to the State Governments but also the latter are being empowered to redelegate that power to "any person" subordinate to the State Government without laying down or specifying any minimum rank or official position which such person must hold.

7. I feel that the present Bill as it has been reported by the Joint Committee will be a failure and cannot solve the problems which it is intended to solve.

NEW DELHI;
The 15th November, 1967.

PRAKASH VIR SHASTRI.

III

I oppose this drastic measure as unnecessary at the present juncture. As far our party is concerned we are unmindful of this legislation but I would ask those who lend their support to this Bill, when we have repulsed the Pakistan aggression and Chinese invasion, we have managed without a legislation of this type. But why this bill is required so urgently? This Bill, as agreed by the Attorney-General brings within its mischief anything honestly spoken as an opinion even a theoretical and idealistic discussion for a peaceful settlement with our disputed neighbours. This measure places restrictions which are unreasonable on the exercise of the freedom of speech, expression and association.

2. The provisions of this Bill, which put the burden of proof on the persons or associations concerned in an abnormal judicial process. The Bill is liable to be misused by the persons in authority against their political opponents and thus drastic measure is unwarranted, ill-timed and unnecessary at this time when we need unity in everything.

NEW DELHI;
The 18th November, 1967.

V. KRISHNAMOORTHI.

IV

The explanations offered by the Government during the course of the discussion in the Joint Committee have not persuaded me to change my view that this Bill is not only not necessary but positively harmful. This Bill marks a stage in India's steady march towards authoritarianism.

2. The purpose of the Bill is ostensibly to curb activities of a secessionist character and prevent propaganda in favour of cession of parts of Indian territory to foreign powers.

3. But the Government's parleys with secessionist groups give a lie to this. As far as cession is concerned, it is not any "individuals and associations" who have been responsible for acquiescing in the occupation of large chunks of Indian territory by China and Pakistan but the Government and the ruling party themselves. The ceasefire in Kashmir in 1948-49, occupation of Kailas, Mansarover and Minsor by the Chinese, encroachments by Pakistan in the Lathitilla-Dumabari area and Chinese aggression in Longju, Barahoti and Ladakh regions and the Government's submissive policy in relation to these violations of our sovereignty and territorial integrity show that they have no moral justification for introducing this Bill. Their refusal to accept my amendment seeking to authorise the citizen to prosecute government agents/authority for supporting cession of Indian territory, whether in fact or in law or both, reveals the Government's real intentions in this regard.

4. Coming to those provisions of the Bill which the Government refused to modify, let me state that I am opposed to the proviso to section 3(3) of the Bill conferring on the Government the right to declare an association as unlawful without first going before the Tribunal. I also cannot support the proviso to section 3(2) empowering the Government to withhold reasons. I am also opposed to the two year period prescribed in section 6(1) for the operation of the notification.

5. Although the rigour of the punishments has been somewhat reduced in the bill as reported by the Joint Committee, I feel that these provisions need to be further liberalised.

6. It would be better if the Tribunal for the purposes of this Bill would be a bench of the High Court.

CALCUTTA: MADHU LIMAYE

The 17th November, 1967.

V

The Bill, even as amended in Committee, is like the curate's egg, good in parts. But an egg good in parts is a bad egg. The Bill suffers from two opposite defects it attempts too much and at the same time does not include enough. It tries to legislate against secession. Secession is a fact not a right conceded or accepted in or for any State. Argument is possible against any speaking or writing on secession as was done by Daniel Webster against Calhoun in the U.S.A. And when secession occurred as a matter of fact it was fought in a war and subdued and ended. It was conceded by the Attorney-General at the second meeting of the Joint Committee that opinion or argument in favour of secession would not come under the condemnation of the Bill, only incitement to secession. And that can be proceeded against under the provisions of the Indian Constitution which defines what constitutes the Union Territory (Articles 1, 2 & 3) and Indian Penal Code (section 141) which prohibits unlawful assembly. And the fact of secession would be met by action by the Army.

2. The Bill suffers from the defect of deficiency. Only two chief kinds of unlawful activities are to be proceeded against—secession and disruption of the country as defined in the Indian Constitution (Articles 1, 2 & 3). The other kind of unlawful activity legislated against by the Bill, overthrowing the Government by law established is provided against in the Indian Penal Code (sections 121 and 121A). But no provision is made against those activities which consist in preaching (with incitement to action) a doctrine which repudiates the fundamental constitutional principles embodied in the Constitution of India which is the supreme law of the country, *i.e.* the doctrine and practice of the Communist Party. In fact all the unlawful activities provided against in the Bill are prohibited either by the Constitution or the criminal law of the country. The Bill therefore is a work of supererogation.

3. Nor have some of the amendments made in Committee been an improvement. For instance, in clause 5 which deals with the constitution of the Tribunal, the Chairman who under the original Bill was to be a retired judge of a High Court is under the amendment to be replaced by one who is a sitting judge of the High Court. The argument used in favour of the amendment was that a retired judge could not be as impartial and independent as a sitting judge—as if a judge's habit and practice of independence and impartiality would be lost immediately he retired.

NEW DELHI; M. RUTHNASWAMY
The 18th November, 1967.

VI

We have gone through the report of the Joint Committee carefully. We tried our best to modify the Bill as far as possible during the stage of consideration in the Joint Committee and we must say that changes accepted by the Committee have substantially improved the Bill.

2. Although clause 5 as amended by the Committee is a distinct improvement, we are not satisfied only with this change. The present change states that a tribunal consisting of one person who will be a sitting judge of a High Court would be appointed. In spite of the fact that a time-limit has been put for a decision by the Tribunal, we feel that on such fundamental matters like this which will deal with the justification of curbing the right of an association to function legally, it is always better that the final decision be left with the High Court. A Bench of the High Court would inspire greater confidence and the parties concerned would be able to get better legal advice and assistance. We would therefore suggest a further change.

3. After giving full consideration to all aspects of the question, we are not convinced that such a bill is at all necessary. The fundamental right of association should not be curbed on such flimsy grounds and the Executive should not be vested with such arbitrary powers. We admit that any trend or movement which tantamounts to the disintegration or threatens the sovereignty and territorial integrity of the country must not be permitted and in no case any person or association should be permitted to indulge in activities for the cession of a part of the territory of India or for the secession of a part of our territory from the Union of India. This would be more than a treasonable act. But the powers already vested in the Executive in different Acts are, according to us, sufficient to deal with any such contingency. The real difficulty is that these powers are not being exercised in the proper manner and at the proper time in the interest of the nation.

4. Under the circumstances, we feel that such a measure is unnecessary and unwanted and the Parliament would do well to reconsider the entire position.

SURENDRANATH DWIVEDY
NIRANJAN SINGH
S. M. BANERJEE
MADHU LIMAYE
T. K. CHAUDHURI

NEW DELHI;
The 18th November, 1967.

VII

The Unlawful Activities (Prevention) Bill, 1967 has undergone some changes in the Select Committee; but the Bill has remained basically the same as was introduced in the Lok Sabha.

2. It is wholly an obnoxious Bill, and clothes the executive with powers to declare Associations unlawful which can be used by the Party in power against Political parties which challenge its rule.

3. Ostensibly, the Bill seeks to prevent organised activities aimed at (1) secession of any part of the country; and (2) cession of any part of the country to a foreign power.

4. As far as the question of secession is concerned, the passing of this Bill is not in any way going to help the solution of the issue where it has been raised as in Nagaland or the Mizo Hills. As for Kashmir, it is equally political question. The demand has not been raised anywhere else. The D.M.K. of Tamil Nad which had the aim of a separate Sovereign Dravida Nad, had given up this demand and is now running the State Government.

5. The unity of this multilingual country was forged during the struggle against British rule, and if this great heritage is not taken forward to further cement the unity of the country and its people speaking different languages, the causes are to be looked for in the policies pursued by the Government in regard to economic development, languages and administration. If these policies are persisted in, centrifugal forces will certainly get strengthened which cannot be fought by repressive laws. These forces can only be fought by pursuing different policies.

6. As for the second object, *viz.*, prevention of cessionist activities, no one desires the cession of any part of the country to a foreign power. If today, a part of Kashmir is under occupation of Pakistan and Aksai Chin is under occupation of China, it is not because of the desire of any one in this country. It is the Government of India that is solely responsible for this state of affairs. The reality is, that whatever might be on paper, in actual physical terms, it is the Government of India that has ceded these areas. The Government has offered many times a 'No war Pact' with Pakistan, which means that the Government of India is not going to attempt to wrest the area from Pakistan by military means. Not only that, it is known that in the talks with Pakistan in 1963, our Government actually offered to settle the international boundary at the present cease-fire lines. Had such a settlement come about, one may question the wisdom of the Government of India, but cannot accuse it of treachery, because the offer was made in good faith in the best interests of the country, as the Government conceived.

7. If it is correct for the Government to make such an offer and seek a particular settlement of a border dispute with a neighbouring country, it cannot be penalised in the case of a political party or an association. This is exactly what the Bill seeks to do.

8. Constitutionally also, this Bill, if enacted, would infringe the provisions of the Constitution. The provisions of the Bill go beyond the purview of the reasonable restrictions on fundamental rights contemplated in the Constitution.

9. In this connection the evidence of the Attorney-General, before the Joint Committee has great relevance. Some of us in the Joint Committee wanted a number of jurists to be examined on the constitutionality of the provisions of the Bill. But the Home Minister opposed it and agreed to examine only the Attorney-General and the majority of the Committee concurred with him. Hence, he alone was examined.

10. It is true that in his opening statement before the Committee Shri C. K. Daphtary said:

"I think it is permissible legislation under the exceptions to Article 19 of the Constitution."

But his answers to questions do not bear this out. I am giving below the relevant extracts from the record of the evidence.

11. I had quoted some instances of the Supreme Court in regard to "reasonable restrictions" and had asked him how he could call the restrictions provided for in this Bill reasonable. In answer to that, Shri C. K. Daphtary stated:

"Shri C. K. Daphtary: May I answer, though it is not easy to answer. Let me start with the Judgement first. That was in 1952. The outlook on fundamental rights and what is reasonable or proper protection, has, as you are aware, gone through a series of changes in that particular court. There was a time in the beginning when the fundamental rights were quite firm. There came a period when they were eroded and gradually Article 14 almost ceased to exist. Then again came a period when the fundamental rights were put up firmly and everything was tested. Perhaps we are again coming to a period when they will not be looked at seriously *as before*. The dicta has varied from period to period. There was a time when everything was looked upon very strictly. There was a period when the court was inclined to be much more generous in its looking upon the adequacy of safeguards."

What does all this boil down to? The Attorney-General feels that if the Constitution "was looked upon very strictly," the restrictions imposed in this Bill cannot be construed as reasonable, but he hopes that although just now we are in a period wherein "the funda-

mental rights were put up firmly and everything was tested. Perhaps we are coming to a period when they will not be looked at as seriously as before."

12. It is only on this assumption, that he was able to say that the restrictions are reasonable. What basis there is for this astrological forecast of the behaviour of the Supreme Court, he did not tell the Committee. At any rate, Parliament can go only on the basis of what is the present position of the Fundamental Rights, and cannot undertake legislation on the basis of such astrological forecasts of the future behaviour of the Supreme Court. If it should do so, then it should take advice on constitutional questions not from the Attorney-General, but from the astrologers, and there must be a Ministry of Astrology in Government.

13. Then again, the Attorney-General was questioned regarding the scope of section 2(f)(i). Both in his opening statement and in answer to questions by some Members that the wording of the section means that an expression of opinion will not come under the purview of the Bill, but only any incitement to action will be actionable. I then pursued this matter with him and am giving below the relevant portions of the questions and answers:—

"Shri P. Ramamurti: You will see sub-clause (3) of section 13 says:—

'Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefor carried on by any person authorised in this behalf by the Government of India.'

Therefore the Government of India is authorised to negotiate with any other country even for the purpose of cession of a part of our country or territory purely from a political point of view. Now, you said, an expression of opinion is not barred. Supposing, a political party thinks that the policies that the Government of India is persuing in a certain border dispute is not correct and, therefore, it thinks that there must be a political settlement which may be 'give and take', while an expression of opinion by an individual is considered to be correct, but a political party, in the interest of the country and genuinely thinking it to be in the interests of the country, in view of the power which the Government is authorised to exercise, in order to make the Government do that thing, it tries to mobilise the people, it tries to canvass support for the public opinion, will that be penalised under this Act?

Shri C. K. Daphtary: As I understand it, if you express an opinion collectively or singly, provided it is an opinion.

Shri P. Ramamurti: It is a question of acting when you say 'it incites other people' when it asks the Government of India to act in this particular manner. Therefore, it is wrong to ask the Government to do a particular thing which the Government is entitled to do under this Act. This Act provides that the Government of India can enter into negotiations etc. and act in a particular manner. How do you say that it is reasonable? Section 13 is very clear that the Government can act. If I ask the Government to act after all democracy means popular opinion and the popular opinion asks the Government to act in a particular way, how is that wrong? For me to mobilise public opinion to go in a particular way, is not considered unlawful.

Shri C. K. Daphtary: The wording used is: "which is intended or supports any claim to bring about on any grounds whatsoever the cession" and the rest.

Shri P. Ramamurti: Without supporting any claim—I need not support any claim—but in the interests of peace and in the interests of our country.

Shri C. K. Daphtary: The party collectively expresses an opinion; you meet together and say 'we express the opinion.'

Shri P. Ramamurti: Political parties in this country function not only among its members, in a democracy the political parties go to the people, ask their opinion, give their opinion, and ask the people to express themselves in favour of that. That means something going and inciting people to act in a particular way. Therefore, if we incite the people in a way as provided for under section 13, then you say: 'You can express an opinion, but you cannot ask the people to do that'. Then it becomes an offence. How is it a reasonable restriction? I can understand your saying 'you cannot question the territorial integrity' correct, I do not question. But in a particular set of circumstances, I may consider it to be in the interest of my country that a particular dispute must be resolved in a particular way, and that is provided for under the Bill itself. Under the Bill itself, the Government may do that. And if I ask the Government to act in that particular way, which is provided for and which is not unlawful, and I mobilise the people of the country for that purpose, then you will say "you are inciting people". It is not merely an expression of opinion. Therefore, you are liable to be punished under this law'. How is it a reasonable restriction when I do something? If the Government is prohibited from doing anything, there I can understand your saying 'you could do that', but the Government is empowered with these powers.

Shri C. K. Daphtary: Why do you put into the Constitution 'integrity and sovereignty of India'. It is to preserve it.

Shri P. Ramamurti: But the Government in certain circumstances is authorised to do certain things. Therefore, in a democracy, people can certainly ask the Government to do a thing in a particular way. How is it unlawful?

Shri C. K. Daphtary: I agree. It did not strike me then.

Shri P. Ramamurti: Yes, he agrees."

At last, the Attorney-General had to agree that such restrictions are not reasonable.

14. Suppose at a general election, a political party decides to raise the issue of a political settlement of our border disputes as a major issue and defeat the ruling Party on that issue. It is perfectly a lawful and democratic procedure. The Bill would prevent it. The unreasonableness of the restrictions, thus become patent.

15. The Bill, therefore, is constitutionally improper. Politically it is inexpedient and will not serve the purpose of fighting centrifugal forces.

16. On the other hand it will become a weapon in the hands of the ruling Party to unscrupulously fight its opponents.

17. I, therefore, urge the dropping of the Bill.

P. RAMAMURTI

NEW DELHI;
The 18th November, 1967.

VIII

जैसा कि विधेयक के उद्देश्य व कारण में दिया गया है कि यह विधेयक राष्ट्रीय एकीकरण और क्षेत्रीयता समिति के सर्वसम्मत सुझाव पर आधारित है, पर यह याद रखने योग्य है कि उस समिति का सुझाव विशिष्ट परिस्थितियों पर आधारित था जब कि मद्रास के एक बड़े राजनैतिक पक्ष ने स्वतंत्र द्रविड़नाड की मांग की थी, अब तो इस पक्ष ने वह मांग छोड़ दी है, इस कारण हम विरोध पक्ष के लोगों का मत रहा है कि इस प्रकार के कानून की अब कोई आवश्यकता नहीं रही । हमें आशंका है कि इस कानून से सरकार को ऐसे विशेष अधिकार प्राप्त हो जायेंगे जिनके दुरुपयोग की बहुत बड़ी संभावना है ।

2. हम स्वीकार करते है कि आपात्कालीन स्थिति में राष्ट्रहित की दृष्टि से इस प्रकार के कानून की आवश्यकता हो सकती है तथा देश द्रोह की स्पष्ट परिभाषा करके उसे एक दण्डनीय अपराध स्वीकार किये जाने वाला एक स्थायी कानून बनाया जाना चाहिये परन्तु इस विधेयक के लिये हम सहमत नहीं हो सकते जिसमें राष्ट्र विरोधी कार्य की लचीली परिभाषा करके सरकार के सहन न होने योग्य किसी भी काम को लपेट में लिया जा सके । हमें आशा थी कि प्रवर समिति इस विधेयक के दुरुपयोग की संभावनाओं को रोकने की व्यवस्था करेगी, पर इसमें यह असफल रही है । अतः इस विमति-पत्र द्वारा हम बहुमत के प्रतिवेदन से असहमति प्रकट करते हैं ।

3. जब विधेयक की विभिन्न धाराओं पर विचार हो रहा था तब हमने सुझाव दिया था कि धारा 2 (एफ) में गैर कानूनी कार्य की व्याख्या इतनी स्पष्ट रखी जाय कि सरकार द्वारा उसका मनमाना अर्थ न लगाया जा सके । मूल विधेयक में इस उपधारा के तीन उपभाग थे । पहले में पृथकता की कार्यवाहियों के लिये व्यवस्था थी, जब कि दूसरे उपभाग में देश की प्रभु सत्ता को किसी भी कोने में चुनौती को गैर कानूनी माना गया था तथा तीसरे में देश की एकता को चुनौती देना दण्डनीय था । यद्यपि अब उपधारा दो व तीन को मिला कर तथा संविधान की भा के अनुसार ही प्रभुसत्ता व अखंडता का उल्लेख कर मूल विधेयक में काफी सुधार कर दिया गया है, फिर भी हम यह आवश्यक समझते है कि 'अखण्डता' (Integrity) शब्द के पूर्व 'क्षेत्रीय' (Territorial) शब्द अवश्य जोड़ दिया जाना चाहिए । अन्यथा 'अखण्डता' (Integrity) शब्द की व्याख्या होनी चाहिए क्योंकि आजकल यह शब्द अनेक अर्थों व भावों को व्यक्त करने के लिए प्रयोग किया जा रहा है ।

4. धारा 3 में दो उपबन्ध हैं जिन से हम सहमत नहीं हो सकते । उपधारा (2) का उपबन्ध सरकार को अधिकार देता है कि वह अपनी विज्ञप्ति में जनहित के नाम पर चाहे, तो उन तथ्यों को प्रकट न करे जिनके आधार पर संगठन को गैर कानूनी घोषित किया गया है । हमारी यह मान्यता है कि जनसाधारण को संतुष्ट किये बिना तथा अपने निर्णय को खरा दिखाये बिना सरकार को यह अधिकार नहीं दिया जाना चाहिए । इस उपबन्ध के द्वारा सरकार को दी गई संरक्षण से अन्ततोगत्वा कानून का दुरुपयोग ही होगा ।

5. धारा 3 (3) का उपबन्ध तो और भी अधिक आपत्तिजनक है । इसका लाभ ले कर हम कानून में न्यायाधिकरण के लिए की गई व्यवस्था द्वारा रोके जा सकने वाले अन्याय को ही सरकार टाल जायेगी । सरकारी आज्ञा को लागू करने के पूर्व अधिकरण की स्वीकृति की अनिवार्यता को ही समाप्त कर दिया गया है ।

6. अधिकरण के गठन के संबंध में भी हमारी मान्यता है कि इसमें तीन सदस्य होने चाहिए जिनमें से अध्यक्ष सर्वोच्च न्यायालय का तथा शेष दो उच्च न्यायालय के न्यायाधीश होने चाहिए ।

एक सदस्यीय अधिकरण पर पक्षपात के आरोप लगाय जाने का भी भय है जिसका अर्थ न्यायाधीश पर व्यक्तिगत आक्षेप भी होगा, जिसे दुर्भाग्यपूर्ण माना जाना चाहिए। तीन सदस्यीय व्यवस्था से इसका निराकरण संभव है।

7. गैरकानूनी कार्यों के लिए लम्बी सजा की व्यवस्था भी तर्कसंगत है। धारा 13 में गैर-कानूनी कार्य करने वाले को 7 वर्ष तक के कारावास का प्रावधान है। पर धारा 6(2) के द्वारा केन्द्र सरकार अपनी इच्छा से गैरकानूनी घोषित करने की अपनी आज्ञा को रद्द कर सकती है। वैसे भी न्यायाधिकरण द्वारा सरकारी आज्ञा को उचित माने जाने के बाद भी 2 वर्ष बाद स्वयमेव आज्ञा निरस्त हो जाती है। अतः विधयक में ही इस बात की व्यवस्था होनी चाहिए कि आज्ञा की समाप्ति के साथ ही वे सभी व्यक्ति जो इस कानून के अन्तर्गत बंदी हों, उन्हें भी मुक्त कर दिया जाये।

8. धारा 13 की उपधारा (3) से भी हमारा मतभेद है। जो कार्य किसी व्यक्ति अथवा संगठन द्वारा किये जाने पर गैरकानूनी माना जाय, उसी कार्य के लिए इस उपधारा के अधीन सरकार को दोषमुक्त किया गया है। यह तर्क दिया जाता है कि सर्वोच्च सत्ता को यह अधिकार प्राप्त होना चाहिए कि वह अपनी भूमि के संबंध में सौदे कर सके। हम इसका विरोध करते हैं। हमारे देश का संविधान तो संसद् को भी यह अधिकार नहीं देता। संविधान की धारा 1 में जहां देश की सीमाओं का उल्लेख है वहां भी क्षेत्र जोड़ने का प्रावधान है, तोड़ कर अलग करने का नहीं। पर यदि यह अधिकार सर्वसत्ता सम्पन्नता का अभिन्न अंग माना भी जाता हो तो भी इस अधिकार को संसद् को ही देना होगा न कि सरकार को। अतः सरकार यदि कोई भी ऐसा काम करना चाहती है [जो धारा 13 (3) के न होने पर गैरकानूनी कार्य माना जा सकता है] तो उसके लिए अनिवार्य होना चाहिए कि उस पर संसद् की पूर्व स्वीकृति ली जाय।

9. अन्त में हम इतने महत्व के प्रश्न पर राज्य सरकारों की राय न लिए जाने की निन्दा करते हैं। यह अत्यंत आश्चर्य का विषय है कि प्रवर समिति को भी इस बात पर रजामन्द कर लिया गया कि राज्य सरकारों के राय की आवश्यकता नहीं है जब कि राज्य सरकारों के सहयोग पर ही इस कानून का सफल कार्यान्वयन बहुत हद तक निर्भर करता है।

10. अपने इस मत के आधार पर हम चाहते हैं कि सरकार इस विधेयक को वापिस ले। हम फिर दुहराते हैं कि राष्ट्र विरोधी कार्यों की रोक थाम के लिए स्पष्ट रूप से देशद्रोह को रोकने वाला एक स्थायी कानून बनाया जाना चाहिए।

नई दिल्ली ;
18 नवम्बर, 1967

सुन्दर सिंह भंडारी
अटल बिहारी वाजपेयी

[*English translation of the above*]

It has been stated in the Statement of Objects and Reasons of the Bill that this bill is based on the unanimous suggestion of the Committee on National Integration and Regionalism. But it should be remembered that this suggestion was based on specific circumstances when a major political party of Madras had demanded an Independent Dravidnad. Now therefore when they have given up this demand, we, of the Opposition, are of the opinion that this kind of legislation will be of no use now. We are afraid that Government would be saddled with such special powers through this legislation as are most likely to be abused by Government.

2. We admit that in an emergency, such a law could have been needed in the national interest and that a permanent law should be enacted which acknowledges unpatriotic activities as a punishable offence after clearly defining it. But we cannot agree to this Bill wherein any such activity which is not tolerable to Government could be called to account by giving an elastic definition of anti-national activity. We hoped that the Joint Committee would provide for the prevention of the scope for misuse of this Bill but the Committee has failed to do so. Therefore, we express our disagreement with the report of the majority through this Minute of Dissent.

3. At the time of clause-by-clause consideration of this Bill, we had suggested that the definition of unlawful activity in section 2(a) should be so specified as to prevent the Government from attaching whatever meaning to it they liked. There were three parts of this sub-section in the original Bill. The first part contained provisions regarding separatist activities, whereas, in the second part, challenge to country's sovereignty was accepted as illegal and in the third part, it was penal to challenge country's unity. Although, sufficient improvement has been made in the original Bill by combining the second and third parts and making a mention of sovereignty and integrity according to the language of the Constitution, even then we consider it necessary that the word 'territorial' must be prefixed to word 'integrity' therein. Otherwise the word 'integrity' should be clearly defined because these days this word is being used to convey different meanings and emotions.

4. We cannot agree to two provisions of section 3. The provision of sub-section (2) empowers Government not to disclose any fact which it considers to be against the public interest to disclose on the basis of which any association has been declared unlawful. We maintain that such power should not be given to Government without satisfying the people and without justifying their decision. This

law would only be abused ultimately by shielding Government under this provision.

5. The provision made in section 3(3) is still more objectionable. Taking its advantage, the Government would come in the way of the removal of injustice by the tribunal for which a provision has been made in the Bill. The obligation of the tribunals approval before the enforcement of the Government Order has been nullified.

6. In regard to the constitution of the tribunal also we maintain that it should consist of three members with the Chairman as the judge of the Supreme Court and the remaining two members as the judges of High Courts. Besides, it is also feared that there would be allegations of favouritism against the one-member tribunal which would also mean personal attack on the judge which should be considered unfortunate. This fear can be eliminated by making a provision for three-member tribunal.

7. The punishment for longer period for unlawful activities is also unreasonable. In section 13, a provision for imprisonment upto seven years has been made for the persons indulging in unlawful activities. But under Section 6(2) the Central Government can, on its own accord, cancel its own order declaring an association to be unlawful. Otherwise also, Government order ceases to operate *suo motu* after the expiry of two years even when approved by the tribunal. Therefore, it should be provided in the Bill itself that all the persons imprisoned under this law should be released as soon as the order ceases to operate.

8. We differ also in regard to sub-section (3) of Section 13. Under this Section, the Government has been exempted from being charged with unlawful activities while any person or association can be declared unlawful if they indulge in any such activities. An argument is advanced that the Supreme power should have the right to enter into transactions in regard to its territory. We oppose this argument. The Constitution of our country does not give this right even to the Parliament. Even in Article 1 of the Constitution which refers to the territory of India, there is a provision for including some territories and not to dismember and separate the same. But even if this right is considered to be an integral part of Sovereign Power, then it has been given to the Parliament and not to the Government. Therefore, in case, Government want to embark upon any such activity which could be considered to be unlawful in the absence of Section 13(3), the prior approval of the Parliament should be made compulsory.

9. Finally, we disapprove the fact of not taking the opinion of the State Governments on the question of such a great importance. It

is very strange that the Select Committee was also made to agree that there was no need for the opinion of the State Governments while the successful implementation of the law, to a very large extent, depends upon the cooperation of the State Governments.

10. On the basis of these views of ours we would like the Government to withdraw this Bill. We reiterate that in order to check the anti-national activities, a permanent comprehensive legislation to stop treason should be enacted.

SUNDAR SINGH BHANDARI
ATAL BEHARI VAJPAYEE

NEW DELHI;
The 18th November, 1967.

Bill No. 60-B of 1967

THE UNLAWFUL ACTIVITIES (PREVENTION) BILL, 1967

(AS REPORTED BY THE JOINT COMMITTEE)

(*Words side-lined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions.*)

BILL

to provide for the more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith.

BE it enacted by Parliament in the Eighteenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and extent.

1. (*1*) This Act may be called the Unlawful Activities (Prevention) Act, 1967.

(*2*) It extends to the whole of India.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "association" means any combination or body of individuals;

* * * * *

(*b*) "cession of a part of the territory of India" includes admission of the claim of any foreign country to any such part;

(*c*) "prescribed" means prescribed by rules made under this Act;

(*d*) "secession of a part of the territory of India from the Union" includes the assertion of any claim to determine whether such part will remain a part of the territory of India;

(*e*) "Tribunal" means the Tribunal constituted under section 5;

(*f*) "unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise)—

(*i*) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession;

(*ii*) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and integrity of India;

* * * * *

(*g*) "unlawful association" means any association which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members* undertake such activity.

CHAPTER II

UNLAWFUL ASSOCIATIONS

Declaration of an association as unlawful.

3. (*1*) If the Central Government is of opinion that any association is, or has become, an unlawful association, it may, by notification in the Official Gazette, declare such association to be unlawful.

(*2*) Every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary:

Provided that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose.

(*3*) No such notification shall have effect until the Tribunal has, by an order made under section 4, confirmed the declaration made therein and the order is published in the Official Gazette:

Provided that if the Central Government is of opinion that circumstances exist which render it necessary for that Government to declare an association to be unlawful with immediate effect, it may, for reasons to be stated in writing, direct that the notification shall, subject to any order that may be made under section 4, have effect from the date of its publication in the Official Gazette.

(4) Every such notification shall, in addition to its publication in the Official Gazette, be published in not less than one daily newspaper having circulation in the State in which the principal office, if any, of the association affected is situated, and shall also be served on such association in such manner as the Central Government may think fit and all or any of the following modes may be followed in effecting such service, namely:—

(*a*) by affixing a copy of the notification to some conspicuous part of the office, if any, of the association; or

(*b*) by serving a copy of the notification, where possible, on the principal office-bearers, if any, of the association; or

(*c*) by proclaiming by beat of drum or by means of loudspeakers, the contents of the notification in the area in which the activities of the association are ordinarily carried on; or

(*d*) in such other manner as may be prescribed.

Reference to Tribunal.

4. (*1*) Where any association has been declared unlawful by a notification issued under sub-section (*1*) of section 3, the Central Government shall, within thirty days from the date of the publication of the notification under the said sub-section, refer the notification to the Tribunal for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful.

(2) On receipt of a reference under sub-section (*1*), the Tribunal shall call upon the association affected by notice in writing to show cause, within thirty days from the date of the service of such notice, why the association should not be declared unlawful.

(3) After considering the cause, if any, shown by the association or the office-bearers or members thereof, the Tribunal shall hold an inquiry in the* manner specified in section 9 and after calling for such further information as it may consider necessary from the Central Government or from any office-bearer or member of the association, it shall decide whether or not there is sufficient cause for declaring the association to be unlawful and make, as expeditiously as possible and in any case within a period of six months

from the date of the issue of the notification under sub-section (*1*) of section 3, such order as it may deem fit either confirming the declaration made in the notification or cancelling the same.

(*4*) The order of the Tribunal made under sub-section (*3*) shall be published in the Official Gazette.

Tribunal

5. (*1*) The Central Government may, by notification in the Official Gazette, constitute, as and when necessary, a tribunal to be known as the "Unlawful Activities (Prevention) Tribunal" consisting of one person. to be appointed by the Central Government:

Provided that no person shall be so appointed unless he is a Judge of a High Court.

(*2*) If, for any reason, a vacancy (other than a temporary absence) occurs in the office of the presiding officer of the Tribunal, then, the Central Government shall appoint another person in accordance with the provisions of this section to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled.

* * * * *

(*3*) The Central Government shall make available to the Tribunal such staff as may be necessary for the discharge of its functions under this Act.

(*4*) **All expenses incurred in connection with the Tribunal shall be defrayed out of the Consolidated Fund of India.**

(*5*) Subject to the provisions of section 9, the Tribunal shall have power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it will hold its sittings.

* * * *

(*6*) The Tribunal shall, for the purpose of making an inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

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(*a*) the summoning and enforcing the attendance of any witness and examining him on oath;

(*b*) the discovery and production of any document or other material object producible as evidence;

(*c*) the reception of evidence on affidavits;

(*d*) the requisitioning of any public record from any court or office;

(*e*) the issuing of any commission for the examination of witnesses.

(7) Any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898. 45 of 1860 5 of 1898.

Period of operation and cancellation of notification.

6. (*1*) Subject to the provisions of sub-section (*2*), a notification issued under section 3 shall, if the declaration made therein is confirmed by the Tribunal by an order made under section 4, remain in force for a period of two years from the date on which the notification becomes effective.

* * * * *

(*2*) Notwithstanding anything contained in sub-section (*1*), the Central Government may, either on its own motion or on the application of any person aggrieved, at any time, cancel the notification issued under section 3, whether or not the declaration made therein has been confirmed by the Tribunal.

Power to prohibit the use of funds of an unlawful association.

7. (*1*) Where an association has been declared unlawful by a notification issued under section 3 which has become effective under sub-section (*3*) of that section and the Central Government is satisfied, after such inquiry as it may think fit, that any person has custody of any moneys, securities or credits which are being used or are intended to be used for the purpose of the unlawful association, the Central Government may, by order in writing, prohibit such person from paying, delivering, transferring or otherwise dealing in any manner whatsoever with such moneys, securities or credits or with any other moneys, securities or credits which may come into his custody after the making of the order, save in accordance with the written orders of the Central Government and a copy of such order shall be served upon the person so prohibited in the manner specified in sub-section (*3*).

(2) The Central Government may endorse a copy of the prohibitory order made under sub-section (1) for investigation to any gazetted officer of the Government it may select, and such copy shall be a warrant whereunder such officer may enter in or upon any premises of the person to whom the order is directed, examine the books of such person, search for moneys, securities or credits, and make inquiries from such person or any officer, agent or servant of used or are intended to be used for the purpose of the unlawful rities or credits which the investigating officer may suspect are being used or are intended to be used for the purpose of the unlawful association.

(3) A copy of an order made under this section shall be served in the manner provided in the Code of Criminal Procedure, 1898, for the service of a summons, or, where the person to be served is a corporation, company, bank or other association, it shall be served on any secretary, director or other officer or person concerned with the management thereof, or by leaving it or sending it by post addressed to the corporation, company, bank or other association at its registered office, or where there is no registered office, at the place where it carries on business.

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(4) Any person aggrieved by a prohibitory order made under sub-section (1) may, within fifteen days from the date of the service of such order, make an application to the Court of the District Judge within the local limits of whose jurisdiction such person voluntarily resides or carries on business or personally works for gain, to establish that the moneys, securities or credits in respect of which the prohibitory order has been made are not being used or are not intended to be used for the purpose of the unlawful association and the Court of the District Judge shall decide the question.

(5) Except so far as is necessary for the purposes of any proceedings under this section, no information obtained in the course of any investigation made under sub-section (2) shall be divulged by any gazetted officer of the Government, without the consent of the Central Government.

(6) In this section, "security" includes a document whereby any person acknowledges that he is under a legal liability to pay money, or whereunder any person obtains a legal right to the payment of money.

Power to notify places used for the purpose of an unlawfull association.

8. (*1*) Where an association has been declared unlawful by a notification issued under section 3 which has become effective under sub-section (*3*) of that section, the Central Government may, by notification in the Official Gazette, notify any place which in its opinion is used for the purpose of such unlawful association.

Explanation.—For the purposes of this sub-section, "place" includes a house or building, or part thereof, or a tent or vessel.

(*2*) On the issue of a notification under sub-section (*1*), the District Magistrate within the local limits of whose jurisdiction such notified place is situate or any officer authorised by him in writing in this behalf shall make a list of all movable properties (other than wearing-apparel, cooking vessels, beds and beddings, tools of artisans, implements of husbandry, cattle, grain and food-stuffs and such other articles as he considers to be of a trivial nature) found in the notified place in the presence of two respectable witnesses.

(*3*) If, in the opinion of the District Magistrate, any articles specified in the list are or may be used for the purpose of the unlawful association, he may make an order prohibiting any person from using the articles save in accordance with the written orders of the District Magistrate.

(*4*) The District Magistrate **** may thereupon make an order that no person who at the date of the notification was not a resident in the notified place shall, without the permission of the District Magistrate, enter, or be on or in, the notified place:

Provided that nothing in this sub-section shall apply to any near relative of any person who was a resident in the notified place at the date of the notification.

(*5*) Where in pursuance of sub-section (*4*), any person is granted permission to enter, or to be on or in, the notified place, that person shall, while acting under such permission, comply with such orders for regulating his conduct as may be given by the District Magistrate.

(*6*) Any police officer, not below the rank of a sub-inspector, or any other person authorised in this behalf by the Central Government may search any person entering, or seeking to enter, or being on or in, the notified place and may detain any such person for the purpose of searching him:

Provided that no female shall be searched in pursuance of this sub-section except by a female.

(7) If any person is in the notified place in contravention of an order made under sub-section (4), then, without prejudice to any other proceedings which may be taken against him, he may be removed therefrom by any officer or by any other person authorised in this behalf by the Central Government.

(8) Any person aggrieved by a notification issued in respect of a place under sub-section (1) or by an order made under sub-section (3) or sub-section (4) may, within thirty days from the date of the notification or order, as the case may be, make an application to the Court of the District Judge within the local limits of whose jurisdiction such notified place is situate—

(a) for declaration that the place has not been used for the purpose of the unlawful association; or

(b) for setting aside the order made under sub-section (3) or sub-section (4),

and on receipt of the application the Court of the District Judge shall, after giving the parties an opportunity of being heard, decide the question.

Procedure to be followed in the disposal of applications under this Act.

9. Subject to any rules that may be made under this Act, the procedure to be followed by the Tribunal in holding any inquiry under sub-section (3) of section 4 or by a Court of the District Judge in disposing of any application under sub-section (4) of section 7 or sub-section (8) of section 8 shall, so far as may be, be the procedure laid down in the Code of Civil Procedure, 1908, for the investigation of claims and the decision of the Tribunal or the Court of the District Judge, as the case may be, shall be final.

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CHAPTER III

OFFENCES AND PENALTIES

Penalty for being members of an unlawful association.

10. Whoever is a member of an association declared unlawful by a notification issued under section 3 which has become effective under sub-section (3) of that section, or takes part in meetings of any such unlawful association, or contributes to, or receives or solicits any contribution for the purpose of, any such unlawful association or in any way assists the operations of any such unlawful association, shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine.

Penalty for dealing with funds of an unlawful association

11. If any person on whom a prohibitory order has been served under sub-section (*1*) of section 7 in respect of any moneys, securities or credits pays, delivers, transfers or otherwise deals in any manner whatsoever with the same in contravention of the prohibitory order, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both, and notwithstanding anything contained in the Code of Criminal Procedure, 1898, the court trying such contravention may also impose on the person convicted an additional fine to recover from him the amount of the moneys or credits or the market value of the securities in respect of which the prohibitory order has been contravened or such part thereof as the court may deem fit. 5 of 1898

Penalty for contravention of an order made in respect of a notified place

12. (*1*) Whoever uses any article in contravention of a prohibitory order in respect thereof made under sub-section (*3*) of section 8 shall be punishable with imprisonment for a term which may extend to one year, and shall also be liable to fine.

(*2*) Whoever knowingly and wilfully is in, or effects or attempts to effect entry into, a notified place in contravention of an order made under sub-section (*4*) of section 8 shall be punishable with imprisonment for a term which may extend to one year, and shall also be liable to fine.

* * * * *

Punishment for unlawful activities

13. (*1*) Whoever—

(*a*) takes part in or commits, or

(*b*) advocates, abets, advises or incites the commission of,

any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

(*2*) Whoever, in any way, assists any unlawful activity of any association, declared unlawful under section 3, after the notification by which it has been so declared has become effective under sub-section (*3*) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(*3*) Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefor carried on by any person authorised in this behalf by the Government of India.

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14. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence punishable under this Act shall be cognizable. **Offences to be cognizable.**

CHAPTER IV

MISCELLANEOUS

15. An association shall not be deemed to have ceased to exist by reason only of any formal act of its dissolution or change of name but shall be deemed to continue so long as any actual combination for the purposes of such associatron continues between any members thereof. **Continuance of association.**

* * * *

16. Save as otherwise expressly provided in this Act, no proceeding taken under this Act by the Central Government or the District Magistrate or any officer authorised in this behalf by the Central Government or the District Magistrate shall be called in question in any court in any suit or application or by way of appeal or revision, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. **Bar of jurisdiction.**

17. No court shall take cognizance of any offence punishable under this Act except with the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf. **Prosecution for offences under this Act.**

18. (*1*) No suit or other legal proceeding shall lie against the* Government in respect of any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rules or orders made thereunder. **Protection of action taken in good faith.**

(*2*) No suit, prosecution or other legal proceeding shall lie against the District Magistrate or any officer authorised in this behalf by the* Government or the District Magistrate in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules or orders made thereunder.

19. The Central Government may, by notification in the Official Gazette, direct that all or any of the powers which may be exercised by it under section 7, or section 8, or both, shall, in such circumstances **Power to delegate**

and under such cond tions, if any, as may be specified in the notification, be exercised also by any State Government and the State Government may, with the previous approval of the Central Government, by order in writing direct that any power which has been directed to be exercised by it shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised by any person subordinate to the State Government as may be specified therein.

Effect of Act and rules, etc., inconsistent with other enactments.

20. The provisions of this Act or any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

Power to make rules.

21. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the service of notices or orders issued or made under this Act and the manner in which such notices or orders may be served, where the person to be served is a corporation, company, bank or other association;

(*b*) the procedure to be followed by the Tribunal or a District Judge in holding any inquiry or disposing of any application under this Act;

(*c*) any other matter which has to be, or may be, prescribed.

(3) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

S. L. SHAKDHER,
Secretary.

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